

## Why Regulate the Sale of E-cigarettes?

The FDA has imposed limited restrictions on sales of e-cigarette (e.g., prohibiting sales to minors, and requiring health warnings on packaging of nicotine-containing e-liquids),<sup>1</sup> and New York State only minimally regulates who may sell e-cigarettes and similar devices.<sup>2</sup> This lack of regulatory oversight has contributed to the proliferation of e-cigarette outlets and marketing.

E-cigarettes are heavily marketed (including in the retail environment), and studies confirm that e-cigarette marketing is particularly appealing to youth.<sup>3</sup> E-cigarettes are sold by traditional tobacco outlets, such as gas stations, bodegas, pharmacies, convenience stores, and supermarkets,<sup>4</sup> as well as in specialty “vape shops,” which are popping up across the country, particularly in college communities.<sup>5</sup> E-cigarettes are also sold in outlets where the sale of traditional tobacco products is prohibited or not tolerated, such as shopping mall kiosks and other mobile outlets.

**Importantly, emerging products like e-cigarettes and similar devices are employing marketing tactics formerly used to promote conventional tobacco products—and which were ultimately proved to obscure the devastating health effects of tobacco use and cause youth initiation.**

E-cigarette marketing is contributing to the rapid rise in youth use of the products.<sup>6</sup> Nicotine exposure by adolescents has potentially serious cognitive and other health consequences, regardless of delivery method.<sup>7</sup> E-cigarettes comprise the most commonly used tobacco product category among youth both nationally<sup>8</sup> and in New York.<sup>9</sup> Nearly 5 million U.S. middle and high school students reported using e-cigarettes in 2015, up from 2.4 million in 2014.<sup>10</sup>

State and local governments may exercise their authority to fill gaps in federal regulation and regulate e-cigarette sales alongside those of conventional tobacco products. Many local New York communities have successfully included e-cigarettes in their tobacco sales and use regulations.

For more information about e-cigarettes and the rationale for regulating their sale, see our technical report, “[Local Regulation of E-cigarettes](#).” Review our [technical report on Tobacco Retail Licensing](#) to understand how local governments may regulate where and how tobacco products are sold.

<sup>1</sup> Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products, 81 Fed. Reg. 28974 (May 10, 2016) (to be codified at 21 C.F.R. pts. 1100, 1140 & 1143) [hereinafter Tobacco Product Deeming Rule].

<sup>2</sup> A bill requiring this registration has passed the New York Legislature, but is still awaiting signature from Governor Cuomo at time of publication. 2017 New York Senate Bill No. 2542, New York Two Hundred Thirty-Ninth Legislative Session.

<sup>3</sup> Alisa A. Padon, Erin K. Maloney & Joseph N. Cappella, *Youth-Targeted E-cigarette Marketing in the US*, 3 TOB. REGUL. SCI. 95–101, 95 (2017).

<sup>4</sup> Youn Ok Lee & Annice E. Kim, “Vape shops” and “E-Cigarette Lounges” Open across the USA to Promote ENDS, 24 TOB. CONTROL 410, 410 (2015); see also Tripp Mickle, *FDA Cloud Hangs Over Vape Shops*, WALL STREET JOURNAL, July 7, 2015, <http://www.wsj.com/articles/SB10130211234592774869404581088451777513530> (last visited Jul 13, 2016).

<sup>5</sup> Lee and Kim, *supra* note 3; see also Mickle, *supra* note 3.; see PUBLIC HEALTH AND TOBACCO POLICY CENTER, E-CIGARETTES FACT SHEET, <http://www.tobaccopolicycenter.org/documents/CPHTP%20e-cig%20fact%20sheet%20%28final%29.pdf>, 1 (2013).

<sup>6</sup> Dale S. Mantey et al., *E-Cigarette Marketing Exposure Is Associated With E-Cigarette Use Among US Youth*, 58 J. ADOLESC. HEALTH OFF. PUBL. SOC. ADOLESC. MED. 686–690 (2016).

<sup>7</sup> Menglu Yuan et al., *Nicotine and the adolescent brain*, 593 J. PHYSIOL. 3397–3412 (2015).

<sup>8</sup> Tushar Singh et al., *Tobacco Use among Middle and High School Students — United States, 2011–2015*, 65 MORB. MORTAL. WKLY. REP. 361, 365–366 (2016) (e-cigarettes were the most popular product category among both middle school and high school tobacco users in both 2014 and 2015); LLOYD D. JOHNSTON ET AL., *MONITORING THE FUTURE NATIONAL SURVEY RESULTS ON DRUG USE, 1975-2015: OVERVIEW, KEY FINDINGS ON ADOLESCENT DRUG USE*. (2016); N.Y. DEP’T. OF HEALTH, *PREVALENCE OF CIGARETTE SMOKING, USE OF ELECTRONIC NICOTINE DELIVERY SYSTEMS, AND DUAL USE BY YOUTH, YOUNG ADULTS, AND ADULTS IN NYS, 2014 1* (2015), [https://www.health.ny.gov/prevention/tobacco\\_control/reports/statshots/volume8/n5\\_cigarette\\_ends\\_and\\_dual\\_use\\_2014.pdf](https://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume8/n5_cigarette_ends_and_dual_use_2014.pdf) (10.5 percent of New York high school students were ENDS users in 2014, while only 7.3 percent were cigarette smokers.).

<sup>9</sup> N.Y. DEP’T. OF HEALTH, *supra* note 8 (In New York, more than half of high school students and young adults who smoked also used ENDS [56.5 percent and 54.9 percent respectively], increasing from 2012’s reported 49.8 percent of current youth e-cig users were current smokers; see Lauren M. Dutra & Stanton A. Glantz, *Electronic Cigarettes and Conventional Cigarette Use among U.S. Adolescents: a Cross-Sectional Study*, 168 JAMA PEDIATR. 610, 615 [2014].

<sup>10</sup> E-cigarette use by middle schoolers increased by a factor of 8.8 between 2011 and 2015 (from 0.6 percent of students in 2011 to 5.3 percent of students in 2015), while use by high schoolers increased by a factor of 10.7 (from 1.5 percent to 16.0 percent) during the same time period. See Singh et al., *supra* note 8 at 361 (reporting 4.7 million total student users in 2015); Rene Arrazola et al., *Tobacco Use among Middle and High School Students—United States, 2011–2014*, 64 MORB. MORTAL. WKLY. REP. 381, 381 (2015).

